

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MCKESSON AUTOMATION, INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 06-028-MPT
)	
SWISSLOG ITALIA S.P.A. and)	
TRANSLOGIC CORPORATION)	
)	
Defendants.)	

STIPULATED FIFTH AMENDED SCHEDULING ORDER

The parties hereto hereby stipulate and agree, subject to the Court's approval, to amend the following paragraphs of the Scheduling Order entered in this case on May 16, 2006 [D.I. 38] to read as follows:

3. Discovery.

e. Discovery Cut Off. Fact discovery in this case shall be initiated so that it will be completed on or before January 31, 2008. Unless specifically agreed to otherwise by the parties, no depositions of additional witnesses, other than experts, Mr. Heilman, Mr. Demmler, Mr. Balsamo, Mr. Provvisionato, Steven Weisburd, Alfred Fabricant and Ian Blum, shall be noticed after October 10, 2007 unless otherwise ordered by the Court. The parties recognize that willfulness discovery may need to continue beyond the January 31 deadline due to scheduling issues associated with Messrs. Provvisionato's and Balsamo's depositions as well as this Court's December 3, 2007 Order. Notwithstanding, by making this stipulation, Defendants are not agreeing to permit any depositions relating to willfulness beyond those expressly permitted by the Court and/or those properly noticed prior to the Court's December 3, 2007 Order. Nothing in this Stipulation shall be construed as a concession by Defendants to permit

the noticing of any additional depositions relating to willfulness. The parties are working to complete such discovery as expeditiously as possible. Expert discovery shall be initiated so that it will be completed on or before April 30, 2008 and will include any new factual issues raised by the expert reports. The Court encourages the parties to serve and respond to contention interrogatories early in the case. Unless otherwise ordered by the Court, the limitations on discovery set forth in Local Rule 26.1 shall be strictly observed.

f. Disclosure of Expert Testimony. Unless otherwise agreed to by the parties, they shall file their initial Federal Rule of Civil Procedure 26(a)(2) disclosures of expert testimony on or before February 28, 2008, and file a supplemental disclosure to contradict or rebut evidence on the same subject matter identified by another party on March 24, 2008. The parties recognize that expert testimony regarding willfulness may be needed and that any such expert discovery and disclosure of expert testimony may need to occur outside of the time periods set forth for such discovery because of the timing of willfulness fact discovery referred to above. To the extent any objection to expert testimony is made pursuant to the principles announced in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S.579 (1993), it shall be made by motion no later than the deadline for dispositive motions set forth herein, unless otherwise ordered by the Court.

10. Case Dispositive Motions. All case dispositive motions, an opening brief, and affidavits, if any, in support of the motion shall be served and filed on or before June 6, 2008. Briefing will be presented pursuant to the Court's Local Rules.

11. Claim Construction Issue Identification. On February 15, 2008, the parties shall exchange a list of those claim term(s)/phrase(s) that they believe need construction and their proposed claim construction of those term(s)/phrase(s). This document will not be filed

with the Court. Subsequent to exchanging that list, the parties will meet and confer to prepare a Joint Claim Construction Chart to be submitted pursuant to paragraph 12 below. The parties Joint Claim Construction Chart should identify for the Court the term(s)/phrase(s) of the claim(s) in issue, and should include each party's proposed construction of the disputed claim language with citation(s) only to the intrinsic evidence in support of their respective proposed constructions. A copy of the patent(s) in issue as well as those portions of the intrinsic record relied upon are to be submitted with this Joint Claim Construction Chart. In this joint submission, the parties shall not provide argument.

12. Claim Construction. The parties shall serve the Joint Claim Construction Chart no later than March 31, 2008. Plaintiff and Defendants shall simultaneously serve and file opening briefs regarding issues of claim construction on or before April 25, 2008. Responsive briefs regarding issues of claim construction shall be served and filed on or before May 16, 2008. After submission of the responsive claim construction briefs, amendment or modification of any claim construction position may be made only by order of the Court, which shall be entered only upon a showing of good cause.

13. Hearing on Claim Construction/Case Dispositive Motions. Beginning at _____, on _____, the Court will hear evidence and argument on claim construction and case dispositive motions.

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and Translogic Corporation*

SO ORDERED this ____ day of _____, 2008.

United States Magistrate Judge

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